

Appl. No. 10/664,373
Docket No. 7792C
Amdt. dated August 10, 2006
Reply to Office Action mailed on June 6, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1 and 2 are pending in the present application. No claims are amended herein. The enclosed claim listing is provided for the Examiner's convenience. No additional claims fee is believed to be due.

Denial of Priority Claim of Prior Filed Application

The present application is a continuation of U.S. Application No. 09/400,041. In the Office action, it is asserted that Applicant has not complied with one or more conditions for receiving the benefit of the earlier filing date of prior filed Application No. 09/400,041, because the disclosure of the prior filed application fails to provide support or enablement in the manner provided by the first paragraph of 35 U.S.C. § 112 for one or more claims of the present application. In particular, it is asserted that the disclosure of Application No. 09/400,041 fails to provide adequate support for "an absorbent article wherein the side panels complete the telling of a storyline when secured to the first waist region." Accordingly, the Office action denied the benefit of claims 1 and 2 to the prior filed application.

In the Amendment filed on March 17, 2006, claim 1 was amended to more specifically characterize first and second image elements recited therein and to delete the following language: "wherein when the side panels are secured to the first waist region the image elements complete the telling of a storyline." Accordingly, it is believed that the disclosure of Application No. 09/400,041 provides adequate support to currently pending claims 1 and 2. Therefore, it is submitted that the present continuation application is entitled to the benefit of the earlier filing date of Application No. 09/400,041, and such indication is respectfully requested.

Rejection Under 35 USC §102 Over Pozniak

In the Office action, claims 1 and 2 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,045,543 issued to Pozniak et al., hereinafter "Pozniak." A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. (See MPEP

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§ 2131, citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). There is at least one aspect of the invention defined by claim 1 not taught or suggested by Pozniak.

Independent claim 1 recites a disposable absorbent article comprising, in part, a pair of side panels and a “predetermined ornamental visual image consisting of a first image element and a second image element, wherein the first image element is joined to one of the pair of side panels and the second image element is joined to another of the pair of side panels.” Claim 1 further recites that “when the side panels are secured to the first waist region the first and second image elements complete the predetermined ornamental visual image.”

Pozniak does not teach or suggest a predetermined visual image consisting of a first image element and a second image element that complete the visual image when the side panels are secured to the first waist region, as recited in claim 1. Instead, Pozniak discloses a personal care article with fastening tabs that can be secured to a front portion of the article. (See col. 2, ll. 16-31). First indicia are located on the front portion of the article, and second indicia are located on the fastening tabs. (See col. 2, ll. 27-38). In the Office action, the indicia lines on the right side of the article of Pozniak are characterized as a “first image element,” and the indicia lines of the left side of the article of Pozniak are characterized as a “second image element.” (See Office action, page 6, lines 11-18). However, Pozniak does not teach or suggest a predetermined ornamental visual image consisting of the indicia lines on the right and left sides of the article, nor such a visual image that is completed when the fastening tabs are secured to the front portion of the article. Rather, the first indicia on the front portion of the article of Pozniak cooperate with second indicia on the tabs for guiding the fastening tabs on the front portion of the article. Accordingly, Pozniak does not teach or suggest all the claim elements recited in claim 1.

Thus, it is respectfully submitted that, for at least the reasons discussed above, Pozniak does not disclose or suggest all the elements of claim 1. As such, it is believed that claim 1 is patentable under 35 U.S.C. § 102(b) over Pozniak. Claim 2 depends from and includes all the limitations of claim 1. Thus, for at least the same reasons discussed above with reference to claim 1, claim 2 is patentable under 35 U.S.C. § 102(b) over Pozniak.

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Therefore, it is believed that claims 1 and 2 are in form for allowance and such indication is respectfully requested.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the denied priority claim of the present continuation application to prior filed Application No. 09/400,041 as well as the rejections of claims 1 and 2 under 35 U.S.C. § 102. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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